[For information on informalized mechanisms for adjusting and applying sanctions within the community and between communities, see Categories 627 and 628.]

*613 He must pay the diiya with the shares which he collects from
682 the others. It makes no difference if the 'aqila must pay
554 with his own money. He is responsible for this matter before
57 the whole tribe."

*613 The collection of the diiya is only one aspect of the
554 process of conflict regulation, but it stands out as the funda-
682 mental manifestation of the office of 'aqila. In the course
• [692] of office, an 'aqila will spend much more time arbitrating
disputes, but it is his responsibility concerning blood-money
which defines his position and his jurisdiction as corporate
682 ones. During the present period in al-Qasr, the practice of
178 blood-revenge has all but disappeared as a mechanism of social
[626] control. Nevertheless, the possibility of its happening is
not too remote. The payment of blood-money is the alternative
[619] to blood-revenge, and blood-revenge is a condition for all-out
[721] tribal warfare--something which the Bedouins look upon with
[829] horror. One informant once likened a primary-level war between
the 'Aishaibat and the Kamailat (should it ever occur) to
*613 "the end of the world." The 'aqila as a representative of a
682 group can prevent war by preventing reciprocal homicides: by
554 presenting his share of the blood-money he regulates conflict
578 and promotes integration. The blood-money is usually paid
over a period of from one to two years. In this case, the
[571] notion of "debt" represents a contingent, institutionalized
social relationship for the purpose of maintaining political
order.

*613 554 578 •692 Conflict regulation, in the formal sense, is the province of the 'aqila. All complaints should be taken before the 'aqila. In al-Qasr, every individual has certain rights, and when any of these rights are infringed upon he may demand a redress of wrongs: he demands his rights, or exercises haqq al-'Arab ("the right of the Arabs"). The haqq al-'Arab is opposed to the haqq Allah, "the right of God," which concerns crimes against religion (i.e., wine-drinking, apostasy). The dichotamy represents private claims over against the claims of a religious state which is characteristic of Islamic society. [688] In al-Qasr, crimes against religion have never occurred, and if they did they would be handled in Marsa Matruh by the local shaikh ("holy man").

*613 554 69 The litigation process is initiated when an individual appears before his 'aqila with a claim, and the statement: "I do not wish so-and-so to take any of my rights." The 'aqila first attempts to persuade each party "to return to the path of the good," to come together and to cease quarreling. This type of moral persuasion is preliminary to a full court-hearing in which both parties will appear with witnesses before their respective 'awaaqil, and other "third parties" who aid the 'awaaqil in their decision. The decision reached by the court is morally binding upon both parties. According to recent [671] [178] innovation in Bedouin customary law, the details of the litigation and the decision reached by the court are to be recorded

*613 554 69 [671] [178] on paper in triplicate, one copy going to each litigant and a third copy to the chief of police of the Marsa Matruh sector. In practice, though, a copy usually goes to the litigants, but not to the chief of police (who had not a single Bedouin court case in his files).

*613 695 •692 [671] As is not the case in Islamic law, in Bedouin customary law the decision of the judge may be appealed. The system of appeals may even function at the level of familial authority, i.e., the son may, in theory, appeal a ruling by his own father. The Bedouins insist that this is an important right of every man. In the situation where a man wishes to appeal a decision of his own 'aqila, he will generally take his claim to another 'aqila of his secondary group. When an appeal is to be made, it is done with the permission of the 'aqila who rendered the original decision. The one who appeals his case does so with the understanding that the decision returned by the court of appeal will be final and binding. Further, if [681] the court of appeal concurs with the findings of the original court, the plaintiff pays a double fine (twice the original fine), and also pays his own 'aqila an expiation fee (kubaara).

69 648 [682] [685] The Egyptians have preferred to leave the Bedouins of al-Qasr to settle their own disputes except in the more serious criminal matters. Police from Matruh will enter homicide cases and those conflicts over property rights which threaten to explode into tribal warfare. But these types of conflict have

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648 been infrequent in al-Qasr. The 'awaaqil of al-Qasr and the police of al-Qasr have an agreement that Bedouin problems are the jurisdiction of the desert leaders, and that the police will intervene only when their help is requested. The Bedouins claim that in the 1930's, the Egyptians tried to do away with Bedouin law but soon discovered their own penal code to be inoperative in the desert. Against "outsiders," the
609
69 Bedouin is duty bound to protect his kinsmen, and hence justice could not be satisfied. One 'aqila said that "only the 'awaiyid
*613 Awlad 'Ali can maintain order because it stops wars through
682
182 payment of blood-money." If a Bedouin, for some reason or
•692 other, takes his case to the police in Matruh, he will be
648 returned to his 'aqila; he will be told that they can do
*613 nothing for him without the permission of his 'aqila. There are exceptions to this rule which complicate modern Bedouin
692 judicial procedure. For instance, in cases which involve
685 government property, such as olive trees and government-
648 operated water systems, a man may legitimately deal with the
*613 police. In one case in al-Qasr, a man's goats destroyed a number of his neighbor's olive trees. The police decided that the owner of the goats should pay the value of the trees. In another case, a man who had constructed small earth dikes in such a way that rain water was prevented from flowing onto his neighbor's land was forced against his will to remove the obstruction. His neighbor had taken his complaint to the

692 police and not to his 'aqila. This was a serious case because
685 the police were forced to imprison the dike-builder for two
648 days before he would agree to their demands. The two men in-
613 volved in the conflict were from different lineages, and it soon became necessary for Bedouin justice to intervene even after the matter had been settled by the police. The 'awaaqil of each man met, along with other notables of the tribe, and investigated the area where the dikes had been; they listened to witnesses and tried to calculate the amount of water which each man should receive. In the end, the decision of the police was upheld.

692 Although, ideally, litigation should be instigated
691 through the office of the 'aqila, alternatives do exist. As
613 noted in discussing the values of Bedouin society, it is the
[577] moral obligation of each and every person to moderate between conflicting parties; any one conflict situation may be moderated by many well-meaning parties. Or, if a person suspects prejudice on the part of his own 'aqila, he may choose to take
627 his claim to another 'aqila, or third party. The notion of a
554 third party to a conflict, when it does not refer to the 'aqila
692 or a close kinsman who may act as an arbitrator, has reference to a non-institutionalized role in al-Qasr. This role-holder, the Bedouins call rajal khair ("good man") or qawaal al-khair ("the speaker of the good").

"Role differentiation implies organization" (Levy

554 1952:165), and the role rajal khair along with the other roles
627 concerned with political action, the 'aqila, shaikh, and 'umda,
•692 represent political organization in al-Qasr. Although the role of rajal khair is not institutionalized to the same degree that the others are, we shall see in the next chapter that it is an important one for an understanding of power relations in al-Qasr. All of these roles carry with them some type of right to make binding decisions in matters regarding conflict regulation. That is, an individual should take his
* [613] claims to the 'aqila, but may take them to any of the other political specialists. In any of the cases, the litigants concerned become bound by the decision of the third party.
* [613] But only at the hand of the 'aqila can a decision be made
[695] which will effect a whole group, i.e., only an 'aqila can
[682] give judgment against a corporation for the blood-money in a case of homicide (Schacht 1953:328).

691 If, however, blood-money is not an immediate concern,
692 the litigants may utilize any and all of the political roles
* 613 available in the judicial system. A statement from one of my
554 informants, an 'aqila, is useful here.
627
[124]

> The bait is made up of thirty or fourty men, and there is one most important man (rajal kabiir), the 'aqila. The 'aqila puts an end to problems, he sees who deserves this and who deserves that. Problems must be settled. It happened five or six years ago that I and my paternal cousins quarreled over land at Wadi Raml. I went to the police station and complained to the shaikh of the 'Aishaibat. I asked him to choose a person to judge

691 between me and my cousins, according to Bedouin law
•692 (yinafth al-'awaiyid bainaana). I went to the shaikh
*613 because my cousins did not agree that we go to the
554 'aqila right away. We agreed that the shaikh would
627 choose the third party, and the judgment would be
binding on both of us. The shaikh chose Bu Halaiqa as
the third party, and Bu Halaiqa chose three others as
consultants. (Two of the three were rajal khair, and
the other was an 'aqila.) The judgment was that my
cousins were in the wrong. They were fined 10 L.E.
and a dhabiiha("blood sacrifice"). 'Ali intervened and
did not allow my cousins to pay the fine. He had them
write a paper stating, that if they resume this quarrel
in the future they must pay the fine plus another 10 L.E.
fine. (Hajj 'Ali is a rajal khair.)

695 Sometimes the Egyptian police must be brought into a judicial
648 affair to insure the execution of a judgment. In one case,
696 an individual in al-Qasr did not accept the decision of his
'aqila; his 'aqila wrote the decision on paper and sent him
to another 'aqila. The second 'aqila agreed with the first,
but the man also refused this decision. The second 'aqila
wrote his decision on paper and sent it to the shaikh of the
'Aishaibat in Matruh. The shaikh summoned the culprit and
sent him to the police station. Finally, the police were able
to convince the man to pay his fine, and also his expiation
fee to his own 'aqila. My informant said that this was a
minor affair, and that had it been a serious offense committed
by the man he would have been threatened with expulsion from
the corporate group.

*613 As the corporate sole, the 'aqila has political authority
554 which is legitimate and morally binding on all who wish to
571 maintain their status in the group and tribe. Any individual

695 602 613 671 untruthfulness and he loses his claim. According to the 'awaiyid, the number of supporters required in a homicide or wounding case is fifty; in a case involving the rightful ownership of land or a well the required number is twenty-five; in a case of conflicting claims over a camel, five relatives must swear in support of the claimant; and in matters concerning smaller animals, such as sheep, the number of supporters will depend upon the number and price of the animals. But, of course, the number of supporters will always be relative to the size of the groups involved, and so the 'awaiyid is not always followed to the letter of the law.

695 692 The time and place of the oath is fixed by the 'awaaqil adjudicating the given case. It is administered either at the tomb of a "holy man," or at the mosque in Marsa Matruh, and always on a Friday, the Muslim Sabbath. There is a standard text to the oath and this is given in the instructions of the 'awaaqil to the litigants. The Bedouins, with few exceptions, 695 784 believe in the effectiveness of the oath of God. The rationale is that no man is willing to lie and suffer the wrath of God. The curse which results from a "bad oath" usually takes the form of an accident or misfortune to the swearer or a member of his family. The Bedouins believe that divine sanction operates not only against the one who makes a bad oath, but also against the one who bears false witness against another and causes him to take the oath.

577 According to this 'aqila, the "good man" is the "good Muslim"
771 who observes the pillars of Islam (fasting, praying, making
183 the pilgrimage, and alms-giving). Also, the "good man" does not steal or lie, and this leads, importantly enough, to social accord.

121 In light of the preceding discussion of authority and
681 law, we can now offer a description of the Bedouin judicial process in action. Southall (1956:121-151) has drawn the
121 distinction between internal and external delicts on the
681 bases of kinds of sanctions rendered, and whether or not
114 chiefly authority mediates conflict. Such a distinction can be only partially applied in the case of the Bedouins of the Western Desert. The kind of sanctions operating in the internal political system do differ from those applied in the external political system, though not to the same degree which is true
121 of Southall's Alurland. On the other hand, since Bedouin
68 society, lacking political centralization, cannot be character-
692 ized as a segmentary state with distinct spheres of authority
842 at successive levels of the lineage structure, the intervention or non-intervention of chiefly adjudication and decision-making cannot serve as a basis for differentiating political
* 613 action. Rather, the lone political office of the 'aqila
627 involves itself in all arbitration which cannot be successfully concluded by the mechanism of familial authority. There are
648 just two exceptions which apply to this latter statement:

121 first, the government may enter into conflict cases which
681 are judged to be out of control and involving the larger tribal
692 units; secondly, litigants, whether exercising internal or
648 external political relations, have the right to take their
[626] case to a rajal khair. Both exceptions represent informal processes of social control in al-Qasr; the first case rarely happens, and the second case seems to occur quite frequently but no recordings of the settlement are made.

681 Sanctions in the Bedouin legal system conform to what
121 Radcliffe-Brown referred to as secondary sanctions: "These are concerned with the actions of persons or groups in their effects upon other persons or groups" (1952:209). Also, it
[671] would seem that Bedouin law is one of private delicts as opposed to a law of public delicts:

[692] In the procedure of a law of private delicts a person or a body of persons that has suffered some injury, loss or damage by infringement of recognized rights appeals to a constituted judicial authority, who declares some other person or body of persons within the community to be responsible and rules that the defendant shall give satisfaction to the plaintiff, such satisfaction frequently taking the form of the payment of an indemnity or damages. A private delict is thus an action which is subject to what may be called a restitutive sanction (Radcliffe-Brown 1952:213).

681 In Bedouin society, delicts are private since they involve
675 individuals or lineage groups, but the restitutive sanctions
671 to which they give rise are backed by communal consensus expressed through public approval in general, and by the twin

121 external system, however, the law recognizes retaliation, a
681 life for a life. Still, even in this case, Bedouin values
682 expressed through the 'awaiyid try to avert bloodshed and
[182] feuding by showing "the good path" and providing the means
[671] for settlement through compensation.

Just as the Bedouin accepts the 'awaiyid as a set of
681 of ideals calculated to regulate conflict, he paradoxically
682 claims the right to impose retaliatory sanctions as a just
182 conclusion to conflict. One Bedouin said that the greatest
[671] sin which a man or group can commit is to accept the diiya
[673] and then take his blood-revenge and return the money. Presumably, a person or group commits no outrage if they refuse the diiya with the understanding that blood-revenge will be taken. In al-Qasr, retaliation and the 'awaiyid are mechanisms
[626] of social control and dispute settlement. A political office
[671] exists, i.e. the 'aqila which functions over the total range
* [613] of political action, and the process of adjudication and
• [692] compensation in the form of indemnity payment represents an institutionalized alternative to retaliation. In all cases of dispute, ritual or religious sanctions back up social sanctions. God is a third party to all conflict, and this is
[706] made manifest in the reading of the Fatiha or the oath-taking
[695] ceremony. In order to describe how authority and sanctions
128 operate in Bedouin society, a number of examples are presented
68 below. Some of the cases are the statements of informants about
[124]
[114]

578 *613 682 Date: 1947. Case: Quarrel between 'Ailit Dawlat and 'Ailit Zagharat of the 'Aishaibat concerning murder. The quarrel began over the ownership of land. Members of the Dawlat assaulted a member of the Zagharat but he did not die. Then members of the Zagharat killed a member of the Dawlat in revenge for the beating. Many 'awaaqil from the [571] [692] tribe came to judge this case. They told the Dawlat and the Zagharat: "Shame on you, you are of one tribe." The decision of the 'awaaqil was made according to the 'awaiyid Awlad 'Ali. A diiya of 400 L.E. was judged against 'Ailit Zagharat. The diiya was collected from all of the members of the Zagharat, and it was paid over the period of three years. The diiya was divided into two parts: one-half went to the sons of the killed man, and the other half went to the 'aiela.

Date: 1946. Case: Quarrel between 'Ailit Dawlat and 'Ailit Zagharat concerning murder. The conflict began when a member of the Dawlat argued with the Zagharat about a piece of land. One night when the man from the Dawlat and his father were on their way home some members of the Zagharat ambushed and killed the father. They did not bother the son because he was only a [571] boy. The 'awaaqil settled the case, and the Zagharat paid a [692] 400 L.E. diiya. In 1959, after all those years, the son and [683] his uncle ambushed the man from the Zagharat who had shot the father; they shot him four times. The man did not die but his leg was paralyzed and he lost the sight in one eye. The

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Date: 24 January 1946
Marsa Matruh

1st Party: 'Awaqil of so-called Harun Abd al-Zain of al-Kamailat

2nd Party: 'Awaqil of so-called Hamad Idris of al-'Aishaibat

Both parties, the first and the second, met before the 'awaaqil and witnesses to solve the prevailing problem between them concerning the wounding of so-called Harun Abd al-Zain who claims that this wound is from Hamad Idris. In the presence of the 'awaaqil all agreed that Hamad Idris should swear the oath and be supported by the below named. And the text of the oath which they will say, is: "By the truth (i.e. haqq, which also refers to a divine attribute) of the owner of this shrine, I swear that this bullet which hurt Harun is neither from me nor do I know who shot the bullet at the time of his injury." And a number of sixteen men must support him at the shrine of Sidi Yunis al-Jaraira on the date of Friday, the 29th of Saffar, 1946. And if any does not present himself for the oath, then the wounds which are present in Harun Abd al-Zain will be from the 'Aishaibat tribe. And if all swear this oath, the two parties will be even with each other. After this, none of them will hold anything against the other. This was issued in the presence of all of their 'awaaqil and with their satisfaction without any force or ill-will.

(On the original document is presented a list of the sixteen men from the lineage of Ma'fas of the 'Aishaibat who were chosen by the Kamailat to support Hamad Idris in the Oath.)

All of the seventeen above mentioned (including Hamad Idris) must be present at the shrine of Sidi Yunis al-Jaraira on the day Friday, 29 Saffar, in order to swear the oath, and this is what took place at the hand of witnesses, and God is the best witness.

Signatures or seals of all 'awaaqil who were present.

Day of the Oath:

It is on the day Friday, the last of the blessed month of Saffar, 1946. The 'Ailit Ma'fas of al-'Aishaibat, and with them 'Ailit al-Mahatha of al-Kamailat, came in order to swear the oath at the shrine of Shaikh Yunis al-Jaraira. And they swore this oath and the Kamailat became reconciled

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that they had received their rights in this case. And the two parties are satisfied by this according to the witnesses present.

Signatures or seals of four witnesses.

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The next case represents the only time in the memory of informants that all of the 'awaaqil of the 'Ali Ahmar met to intervene in a case of conflict. This case is extremely unusual because it may be the only time in Awlad 'Ali history that political mobilization of this scale has taken place. As noted, political action, in war or peace, usually involves only secondary segments. In view of this, the case probably [177] [648] reflects an instance of social change: the Egyptian government, anxious to maintain good relations with Libya, encouraged and facilitated the settlement of this dispute by furnishing transportation and cutting administrative red tape so that the 'awaaqil of the 'Ali Ahmar could handle this case in a most expeditious way. Here is a case where Bedouin traditional [182] political structures function adequately in the modern situation. Note here also that, in certain circumstances, the diiya payment can be divided symbolically and specifically to place guilt and to indicate the seriousness of a crime.

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Date: 1963. Case: Quarrel between the tribe of 'Ali Ahmar (Egypt) and the Harabi (Libya) concerning murder. A young boy of 'Ailit X was visiting his sister in Libya. He learned

423 long time ago. This seems to be supported by the evidence
*613 shown below, for often conflict over land and water rights is
182 represented by litigation between individuals and not groups.
[691]

I have arbitrarily assigned to the classification of
422 property rights the rights over women. I have done this
562 because a man acquires such rights as a member of a lineage
*613 jural group and secures them with the backing of public opinion and the 'awaiyid. Also, though a man in al-Qasr does not "own" his wife, he does have the legal rights to certain things related to her: he has the right to her sexual favors, and the right to claim her offspring for his own lineage.

Settlement in cases dealing with the infringement of
685 property rights, if they do not lead to personal injury cases,
695 will usually be concluded by arbitration or oath-taking, either of which brings the two parties into agreement.

691 Date: 1964. Case: Quarrel between Bait 'Umran and Bait Idris
685 of 'Ailit Ma'fas over the ownership of a well. The 'awaaqil
*613 sent for the two parties involved, and they met on Wednesday,
578 market day. And the 'awaaqil told the two parties: "This is
•692 a shame ('aib), you must be friends because you are from the same tribe." The 'awaaqil knew "from past history and from truthful elders" that the well belonged to 'Ait Idris. The 'awaaqil made 'Ait 'Umran change their minds about their claim
[695] to the well. Before the litigation 'Ait 'Umran had insisted

691 that 'Ait Idris take the oath as proof that the well was
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*613 owned by them. Upon the decision of the 'awaaqil, however,
578 'Ait 'Umran refused to allow 'Ait Idris to swear the oath
•692 "because we are all one family." This means, as one 'aqila
695 actually stated at the conclusion of the case, that " 'Ait Idris is indebted to 'Ait 'Umran."

423 The following two cases which occur in the external
675 system of political relations, one within the 'Aishaibat
*613 territory and the other dealing with land rights in the territory between two primary authority groups, indicate the formal aspect of Bedouin adjudication in establishing contracts.

[539] Date: 12 August 1963. A Contract of Agreement on Land Rights.
Agreement and satisfaction took place between Hussain Karim al-Dawlak of al-'Aishaibat and Khalid Idris al-Ma'fas of al-'Aishaibat, the first and second party. And the reason for this agreement is that each of the two parties own cultivable land at Ras Wadi Madwar. The two parties wish to make a dividing line between this linear piece of land and to declare the borders. The two parties agreed on the following: first, the beginning of the border extends from the eastern side at south Ras Raqabit al-Shumar to the western side at Hatiyid and is shown by stone markers; secondly, this line should be established from the east to the west, and this is a dividing line between the two parties and was executed by them and with their satisfaction; thirdly, whoever rejects or modifies this line will be responsible in front of law and the 'awaiyid Awlad 'Ali; each party is responsible for his children and relatives as to their actions regarding this line which is the subject of the agreement; fifthly, this contract of agreement which defines the borders between the two parties was issued in two copies, a copy to each party to use when it is needed.

Signatures or seals of seven men.

619 578 685 *613 695 [571] •[692] said: "I did not take anything." The 'awaaqil of both parties met and told the accused: "If you have anything give it to us; if you do not have anything then swear the oath to this fact." Members of 'Ailit Ma'fas said that the boy was innocent and told the 'awaaqil that the boy should have his rights according to the 'awaiyid (i.e. he should be allowed to swear the oath to establish his innocence). The boy accused of the theft, his father, and two other members of 'Ailit Ma'fas selected by the accusers swore the oath and the problem was over. Two months later, the accuser from the Kamailat lost his eye in an accident, because swearing the oath has consequences for both parties. A bad oath will work against the one who makes it; there will be a curse upon him, his children, and his money. And the bad effects of an oath will also work against the one who falsely accuses another making him swear the oath.

582 562 *613 792 The final two cases deal with marriage rights. The first illustrates a number of things which I have touched on in the previous discussion of marriage: that a man may choose to ignore the jural structures of the lineage group where the desires of his offspring are concerned; that the female is not the totally subjugated person which one might expect to find in the strongly patrilineal Bedouin society; and that the role of "holy man" functions in the marital area of authority relations.

*613 he was insistent upon his right to have her. She went to
619 see the "holy man," al-Sanusi, who lives near al-Qasr. (Al-
578 Sanusi is a descendent of "the Great Sanusi," the founder of
582 al-Sanusiyya, who now lives in Egypt after having been exiled
793 from Libya.) Al-Sanusi decided to keep the girl at his farm
*613 until he could decide a course of action. One night, the
619 girl's cousin secretly came to the Sanusi farm and found her
578 room. The girl was sleeping. The cousin struck a match, the
582 girl awoke and was frightened. She jumped from her bed and
793 began to run, in so doing she fell down a flight of stairs
683 and suffered a rupture. This was a serious offense which the
cousin had committed, and al-Sanusi decided that he should call
all of the 'awaaqil of the area to inform them of this. In the
meantime, he sent the girl back to her home and the cousin
continued to bother her concerning his rights over her.
[584] The cousin went so far as to "offer the blood-sacrifice for
her," a stage in the marriage process which signifies that the
union has been consented to by both families. The girl's
father was dead, and her brothers and uncles were unable to
keep the cousin away from the girl. (It may be assumed that
they were conscious of his rights to bint 'amm.) They had
even beaten him once. All of the 'awaaqil of 'Ali Ahmar and
• [692] 'Ali Abyad, and the Marabtiin in the al-Qasr area came to meet
with al-Sanusi at his farm. He (al-Sanusi) said that they all

*613 must come because he, himself, was a Libyan and a member of
619 no tribe in Egypt. Al-Sanusi's petition was two-fold: he
578 said the cousin should be punished for violating his right of
582 privacy and property, and the question concerning the cousin's
793 right to the girl should be settled. The 'awaaqil decided
683 that al-Sanusi should be awarded a kubaara of 1000 L.E. from
•692 the tribes of the area, and that the girl should be permitted
to marry no man of the Qinaishat tribe. Al-Sanusi refused to
accept the kubaara, and this was the correct thing to do since
the kubaara, especially a large one, is only offered ritualistic-
ally. The 'awaaqil took note of the cousin's rights to his
bint 'amm: they said that since the girl refused to marry him
it would not be right if she married anyone else from the tribe.
*613 Furthermore, the 'awaaqil, on the basis of the cousin's behavior
619 in this matter, decided that the cousin was insane and should
734 be committed to an asylum. They informed the police in Marsa
[648] Matruh of this diagnosis and decision, and the police came and
transported the boy to the mental hospital in Cairo where he
is today. The uncles of the boy signed the papers which com-
mitted him.

of any permanent office; it is any person who is exercising the legitimate use of force. Simple as the above argument might seem, it really offers very little in refining our conception of legal sanctions. For we are still left with the question of how a person acquires the right to exercise the physical force. What gives his action the legitimacy that is otherwise lacking in other forms of coercion? In trying to deal with this problem anthropologists resorted to a concept that is used by the analytical jurists, that is, the court. There is a basic difference, however, between the anthropologists' view of the court and that of the analytical jurists. The latter see the court as the ultimate source of law: court creates the law. Anthropologists, on the other hand, tend to use the court as the source of law but as a criterion of its existence. An example of such views is Max Radin who maintained that the infallible test "for recognizing whether an imagined course of conduct is lawful or unlawful... is to submit the question to the judgment of a court" (1938:1145).

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Anthropologists differed among themselves, however, on what constitutes a court. While Radcliffe-Brown (1940) insists that it must be a body of people acting on behalf of the community as a whole and therefore does not exist in all societies, Hoebel (1961), on the other hand, extends the concept to include the diffused public opinion or sentiment of the people in a given society as a kind of court that gives legitimation to the use of force by individuals or groups in the absence of a recognized body acting on behalf of the community. He sees a court in cases of self-help where the aggrieved party or his kinsmen carry on the procedures of redress without the intervention of a third party. He maintained that if the procedures are right, there will be "at least the compulsion of recognized 'legal' procedure, though the ultimate court may be the 'bar of public opinion'" (1961:25).

The concept of the court has been prominent in the writings of several other anthropologists besides Radcliffe-Brown and Hoebel. Bohannan (1957, 1964, 1965), Redfield (1964) and Pospisil (1958) all imply the existence of a court of some kind or another as the identifying mark of the existence of legal rules. In his attempt to distinguish between law and custom, Gluckman thought of law to exist "as a series of acceptable judgments of rightdoing and wrongdoing in particular cases" (1955:262). Custom and other social observances function as corpus juris and as such a basis for the judgment of where the behavior of one of the litigants in a case is reasonable or unreasonable, lawful or unlawful. As such, custom is a source of law, but not law itself. It becomes law when drawn upon in passing judgment in a given case. In commenting on a passage on the Nuer by Evans-Pritchard, Gluckman made it clear what he meant by the court. "This passage shows that even in a society where 'self-help' is the enforcing sanction, people judge situations of dispute in terms of rights and duties, and wrongs....Therefore, it seems fair to say that among the Nuer, though they have no courts, there is a process of judgment by mediators and ordinary people in which custom and morality as part of the corpus juris constitute 'sources of law' for particular decisions" (1955a:263).

The importance of the above passage from Gluckman is his distinction between the concept of the court and the judicial process, a distinction lacking in the writing of most other anthropologists dealing with the study of law. Failure to distinguish the two aspects of the legal system resulted in confusing a basic societal process with one of the mechanisms through which the goals of that process achieved in certain societies. In its broadest sense, the judicial process refers to the ways disputes are settled within society. Since didsputes arise out of the very nature of social interaction, some form of dispute settlement is found in all societies.

The form which the process of dispute settlement takes differs from one society to another. In certain societies disputes are settled through a process of informal mediation undertaken by go-betweens; in others it is by means of self-help; still in others, it is by way of court. In societies with courts the process of dispute settlements is undertaken by judges who "take and assess the evidence, examine what they regard as the facts, and come to a decision in favor of one party rather than another" (Gluckman 1965:183).

Within a given society, disputes are settled in accordance with a set of principles that reflect the basic goals and values of that society. As long as the settlement of a particular dispute proceeds according to these principles, the settlement is supported by the public opinion of that society. This is true whether the process is carried on b y means of informal mediations or through a court system. It is this public opinion as the expression of the basic societal values and not the court as a special mechanism that gives legitimation to the judicial decisions. To equate opinion with the court as Hoebel (1961) did, or to look at the court as the ultimate source of legitimation as did Radcliffe-Brown (1940) and others (Redfield 1964, Bohannan 1965), is to create an unnecessary confusion which tends to undermine meaningful cross-cultural comparisons. Whatever the differences among anthropologists with regard to the definition of the court, their main interest in the concept so far has been as a tool for the definition of law. The interest in the concept gave rise to a methodological approach which came to characterize the literature in legal anthropology, namely, the case-study approach, cases having been utilized in a number of ways by legal anthropologists. In their book on the Cheyenne, Llewellyn and Hoebel (1941) introduced the analysis of "the trouble case." This was followed by a number of studies utilizing the case study method either to

document statements concerning the substantive law of the society studied, or to abstract and elucidate that law. An example of the first technique is Howell's analysis of the Nuer court decisions (1954) where he collected a large number of court cases, cla-sified them and abstracted the substantive aspect of the native law. Gluckman's study of the Lozi (1955) represents the second technique. Smith and Roberts used the same method of case analysis to abstract certain principles of the Zuni law (1954), and Nader utilized it in her study of the Zapotecan law (1964). The list of those who utilized the case-study approach is quite extensive, and the range of the societies they studied is quite varied. But most of them share the interest in the substantive rather than in the procedural aspect of the law.

When referring to the procedural aspect of the law one should keep in mind the difference between the technical and the abstract components of procedural law. The first refers to the activities and steps involved in the settlement of disputes in the society as well as the person or body undertaking the responsibility of such settlement. The second involves a number of abstract principles reflecting the values of the society with regard to the goals of the judicial process, and which the judicial persons use as a guide in achieving a settlement or in passing a judgment of one kind or another. These are the bases of judicial reasoning. Although judicial reasoning represents one of the most interesting and important aspects of the judicial process, it attracted very little attention among legal anthropologists. With the exception of Gluckman and his analysis of the concept of "reasonable man" among the Lozi (1955a), no significant work has been done in this area. In dealing with the concept of the reasonable man, Gluckman was more interested in discovering universals in laws than in the process of judicial reasoning as such. He implied that an

657 full-time employment with the government projects in the area and
[198 settle in fairly permanent houses near the place of work.
(464

With the movement toward settling down, the relative legal and
657 political autonomy which Awlad Ali once enjoyed is breaking down. This
642 was reflected first in the loss of military exemption. In 1947, the draft law was applied to all tribal populations in Egypt, including Awlad Ali. The application is not seriously enforced, however, due to the fact that births are still not recorded in the area. In 1954,
657 the "omda" or mayorship system practiced in the rural areas of Egypt
634 was extended to the Western Desert with certain modifications to fit
177 the tribal organization of populations in the area. This put a strain on the native system of leadership, a point which will be covered in
657 later chapters. Finally, and along with the extension of the omda sys-
692 tem, the jurisdiction of the legal system of the state was extended
177 over the area. This resulted in a duality in the judicial process.
178 The tribal law, with its traditional tribal mediators, is still functioning side by side with the modern court system of the state law. In many cases, especially in criminal cases, the individual is tried under both systems, and sometimes receives two different judgments for the same offense. Various efforts are being made to minimize the effects of this duality. In civil cases, the problem does not seem serious, since it is the parties themselves, or one of them, who voluntarily bring the case to the attention of the legal authorities. Therefore, they can choose between the traditional legal system and the modern courts of law. So far, civil cases are brought to the modern court system only when the native procedures fail to achieve a settlement. As such, the

modern court system may be viewed as a form of appeal to the tribal justice. One has to be careful, however, in calling such a procedure an appeal, since the tribal proceedings have no relevance in the court proceedings.

The duality is more serious in criminal cases. When an act is defined as illegal by both the tribal and modern law, persons committing it come automatically under the jurisdiction of both laws. As long as such acts remain unknown to the police, the duality of procedures is not undertaken. This is possible in minor cases of assault or theft or adultery. But in major cases, such as homocide or serious assault resulting in the serious injury of a tribal member, it is difficult to keep the news a secret from the authorities. The funeral proceedings in the former cases and the medical attention needed in the latter cases are hard to conceal. Besides, serious cases start a whole series of mediations and go-betweens which always become the general knowledge in the entire area and the subject of conversation among the people. When the authorities know about such cases, they have to take immediate action to bring the offender to trial, even when the government authorities know that the tribal proceedings are being conducted in the case. Some attempts are made by both the tribal law and the modern law to minimize the effect of that duality. It is common that when the district attorney knows that a certain criminal case has been successfully solved according to the tribal proceedings, to ask for the minimum penalty for the offense. On the side of the tribal proceedings, once the case has been solved, the witnesses needed to testify for the prosecutor are instructed by their fellow tribesmen to refrain from giving the information

2: Mohsen E.O-5 (1958-1966) 1971 MT9 Libyan Bedouin MT9
Awlad Ali

CHAPTER VI

HOMICIDE AND BODILY INJURIES

Part 1: Homicide

579 Fighting is quite common among Awlad Ali. Many of these fights involve a large number of individuals and result in many casualties 579 and sometimes even deaths. Fighting is considered "shar," or evil, 673 for according to Awlad Ali, it threatens the social cohesion which is 182 highly valued in the area. Yet, although undesirable, fighting and [682] even homicide are not considered a crime against society and sometimes are viewed as necessary to safeguard individual and collective rights in the absence of an established authority which could protect these [177] rights. Although this absence of an authority is remedied now by the [692] introduction of state administrative justice, this has not yet achieved enough efficiency and recognition to replace the old tribal system.

619 In the tribal system, there is no concept of individual punishment 681 inflicted upon the suspect. There is no recognized authority to inflict 692 it. The mardi or the 'aqila who performs the function of dispute settle- [629] ment in the case of homicide has no power to pass or inflict any punishment. His role is restricted to mediation between the two parties involved 682 as was earlier mentioned. Homicide, like all other wrongs among Awlad Ali, 673 are private wrongs affecting the individual or a group of individuals. [182] The main purpose of the tribal proceedings in the case of homicide is to restore some form of harmony and order among the group. This harmony is sometimes restored by killing the murderer or any member of his vengeance 682 group, or amar. Feuds may result from such killing, and a few instances 628 of feuds have, in fact, been recorded in the area (although not in the

682 agreed that the sticks were not by nature lethal weapons. The
672 latter, according to the tribal law, are only guns and knives,
627 since they give the victims no chance to defend himself. They ruled the case unintentional killing for which only L.E. 300 should be paid.

682 Since Yadem and his brother were arrested by the police for
625 their crime, the payment of the bloodmoney was postponed until
692 the case was settled according to the state legal system. Only half of the bloodmoney was paid and the rest was postponed until the case was decided upon by the legal system and Yadem released.

682 This is obviously a case in which the nature of the killing was
672 decided upon by drawing upon the material aspect of criminal
673 causation. The nature of the weapon used was the major determinant
[411] of the crime. Only guns and knives are defined as lethal; all others are non-lethal by nature, although they might cause the death of the victim. Death caused by a non-lethal weapon is considered as unintentional regardless of whether or not the actor intended the results, while death by a lethal weapon, even without the intention of killing, is classified as intentional killing, as appears in the following case.

CASE #4: The Case of the Threatened Tribesman

613 For more than five years Bait El-Mawi from the Sheibat tribe
628 had been in a continuous state of feud with Bait El-Asi from the Gemeiat tribe. One night, during a Khamasein sand storm when visability was extremely low, Abd-el-Galil from Bait El-Mawi heard a noise outside his tent, and the dogs were barking indicating that a stranger was there. Being sure that someone was approaching

105 The judicial process among Awlad Ali of the Western Desert of Egypt has been dealt with in the context of political organization of
105 the group. The main feature of the political organization of Awlad Ali
613 is the absence of centralized leadership. The only formally recognized leadership is that of the aqila, the leader of the bait tribal segment.
105 The sources of the aqila's authority derive from a number of sources,
613 one of which is his judicial role. It is through him that disputes in-
627 volving members of his bait are solved. The process by which he performs this crucial function is that of informal mediation in which both the personal qualities of the aqila, as well as the weight of his tribal segment, play an important role. This is especially important in a society with no court system or formal hearing and where durability of any settlement depends on its being accepted by the parties involved.

105 The main aim of the judicial process is to affect reconciliation of
182 the parties and to restore a certain degree of social order and cohesion
627 that was disrupted by the dispute. The need to restore the social order
[619] and to maintain friendly relations between tribal members is a response to certain aspects of the natural and social environment in which the
105 group finds itself. Natural resources in the area are very meager, and
182 subsistence activities require that the tribesmen constantly move with
619 their herds for pasture throughout an area already divided among the
233 various tribal segments. Since the place and nature of pasture differ from one year to the next, the identity of the specific tribal unit which would be sought for help varies correspondingly. This creates a general feeling of dependency that characterizes the social relations in the area.